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October 18, 2018

VIA ECF

Honorable James B. Clark, U.S.M.J.
United States District Court
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: DVL, Inc., et al. v. Congoleum Corp. and Bath Iron Works Corp.
Civil Action No. 17-4261 (KM) (JBC)

Dear Judge Clark:

This firm represents Defendant and Counterclaim/Cross-Claim Plaintiff Congoleum Corporation (“Congoleum”) in the above-referenced matter. Please accept this letter as the parties’ joint status update in advance of the telephonic status conference scheduled for November 14, 2018 at 11:30 a.m.

In accordance with the Pre-Trial Scheduling Order (ECF 42) and Amended Scheduling Order (ECF 61), the parties completed the exchange of paper discovery and are now in the process of reviewing Electronically Stored Information (ESI). The parties have agreed, subject to the Court’s approval, to begin rolling productions of ESI on or before November 2, 2018. Given the voluminous amount of ESI that Congoleum and plaintiff, DVL, must compile and review, the parties are not yet able to estimate when they might complete the production of ESI. We hope to be in a position to discuss this on November 14th.

The parties also jointly request an extension and/or clarification of an interim date in the scheduling orders. Presently, the deadline for “addressing unresolved discovery disputes related to paper discovery” is October 29, 2018. In the parties’ view, this deadline is appropriate as it relates to written discovery responses and the exchange of paper document productions.¹ We believe that was the intent of the deadline. The parties seek clarification that the deadline does not prohibit a party from raising a dispute as to privilege logs, ESI, supplemental discovery requests, and third-party subpoenas at a later date. To the extent it would bar such an application to the Court, the parties request that the deadline be extended into early 2019. In light of the amount of ESI that remain to be reviewed, produced, and digested, it is likely the parties will need to seek relief from the current fact discovery deadline set for March 29, 2019, and the parties request that two interim dates, which were sequenced to previous scheduling order dates which are now somewhat stale, be extended until the end of ESI production: the deadline to add new parties and

¹ Congoleum is having a dispute with Peak Environmental (DVL’s consultant) regarding a subpoena. This dispute may be ripe for the Court in the near future.

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the deadline to amend the pleadings, both of which were set for 10/26/2018 in the Amended Scheduling Order (ECF 61).

Finally, Congoleum and BIW have raised issues with DVL regarding the destruction of boxes of documents both during the litigation and when litigation was contemplated. The parties have met-and-conferred and exchanged multiple letters on this topic. This dispute has not yet been brought to the Court's attention as we now believe that deposition testimony from DVL may be needed in order for the dispute to ripen. We do not read the Court's scheduling order as precluding the parties from raising such a dispute with the Court at a later date, but nevertheless include it in this joint status report out of an abundance of caution.

If Your Honor has any questions, please do not hesitate to contact us. We look forward to speaking with you on November 14th.

Respectfully submitted,

s/ Camille V. Otero
Camille V. Otero
Director

cc: All Counsel of Record (*via ECF*)